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No. 90-605

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

UNITED STATES DEPARTMENT
OF TRANSPORTATION, *et al.*,
Petitioners,

v.

AIR TRANSPORT ASSOCIATION OF AMERICA, *et al.*,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

MEMORANDUM SUGGESTING THAT THE CASE IS MOOT

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Respondents respectfully suggest that this case is moot. Respondent Air Transport Association of America (ATA) explained the legal basis for this suggestion in its Brief in Opposition to the Petition for Certiorari. *See* Brief of Respondent Air Transport Association of America in Opposition to the Petition for a Writ of Certiorari, pp. 1-9. In petitioners' subsequent Reply, the Government requested, with regard to the mootness issue, that respondents indicate whether they would be willing to accede to vacation of the judgment of the Court of Appeals and to dismissal of the Petition for Review. Reply Brief of

Petitioners, pp. 6-7. This Memorandum is intended to inform both the Court and the Government of respondents' answer to the Government's question.

All respondents in this case persist with their conclusion that the case is moot. Because FAA already has amended the Final Rule that prompted the Petition for Review, respondents have no further interest in the judgment of the Court of Appeals and are willing not to rely upon it further. Furthermore, respondents seek no judicial relief with regard to the Rule. In particular, neither respondents themselves nor the members of respondents ATA, National Air Carrier Association, Inc. (NACA), Air Line Pilots Association (ALPA), Aircraft Owners and Pilots Association (AOPA) have an interest in challenging the validity of the Final Rule now or in the future, on the grounds advanced by respondents in the Court of Appeals, in civil penalty proceedings conducted in any part under the Final Rule or in cases seeking judicial review of penalties assessed in such proceedings.[1] As a result, respondents do not oppose an order from this Court vacating the Court of Appeals' judgment as moot and dismissing the Petition for Review with prejudice. *See Deakins v. Monaghan*, 484 U.S. 193, 199-200 (1988); *United States Department of State v. Washington Post*, 464 U.S. 979 (1983) (Mem.) (After grant of petition for a writ of certiorari, respondent withdrew its request for judicial relief, and the United States filed Memorandum Suggesting Mootness, which was accepted by the Court).

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[1] In this case, respondents ATA, NACA, ALPA, and AOPA have pursued judicial review of the Final Rule as representatives of their members.

Respectfully submitted,

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